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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,443	09/26/2000	Michael John Cullen	200-0767	2938

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EXAMINER

PANG, ROGER L

ART UNIT	PAPER NUMBER
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3681

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/669,443

Applicant(s)

CULLEN ET AL.01010101

Examiner

Roger L Pang

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-19 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11, 12, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The following action is in response to the RCE filed for application 09/669,443 on November 24, 2003.

Election/Restrictions

Claims 5, and 13-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 6-9, 11-12, and 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claims 1 and 18, applicant positively claims the limitation of "a driver", which is not part of the invention. It is suggested that applicant remove the limitation of "the vehicle being operated by a driver" and replace "a vehicle" with --a driver operated vehicle-- in order to overcome this issue. With regard to claim 4, applicant has already claimed a "vehicle speed deceleration trajectory" in claim 1. Therefor it is believed that this claim does not provide any additional limitation. It is suggested that applicant cancel this claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4, 7-9, 12, and 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Cullen. With regard to claim 1, Cullen teaches a method for controlling a powertrain coupled to a driver operated vehicle, the powertrain having an internal combustion engine 10 coupled to a transmission 14, the method comprising: determining a desired vehicle speed deceleration trajectory 210 in response to a release of an accelerator pedal 50 by said driver, where desired engine output torque changes from positive to negative based on said release, and during said release: adjusting an engine operating parameter to maintain positive powertrain output torque when an actual vehicle trajectory 220 is below said desired vehicle trajectory 230; and adjusting said engine operating parameter to transition from positive powertrain output torque to negative powertrain output torque based on a determination of whether said actual vehicle trajectory is

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above said desired vehicle trajectory 270. With regard to claim 2, Cullen teaches the method further comprising limiting powertrain output rate of change (acceleration) during said transition. With regard to claim 3, Cullen teaches the method wherein said step of adjusting said engine operating parameter to transition from positive powertrain output to negative powertrain output further comprises adjusting said engine operating parameter to transition from positive powertrain output to negative powertrain output when said actual vehicle trajectory is above said desired vehicle trajectory by a predetermined amount 260. With regard to claim 4, Cullen teaches the method wherein said vehicle trajectory is a vehicle speed trajectory (acceleration). With regard to claim 7, Cullen teaches the method wherein said desired vehicle trajectory is based on vehicle and engine operating conditions (Col. 3). With regard to claim 8, Cullen teaches the method wherein said desired vehicle trajectory is based on a position of a transmission lever (Col. 3). With regard to claim 9, Cullen teaches the method wherein said lever selects between at least the following gears: reverse R, neutral N, a first forward 1, and a second forward L. With regard to claim 12, Cullen teaches the method further comprising the step of controlling powertrain output to a required negative powertrain output to maintain said vehicle trajectory at or below said desired vehicle trajectory (Col. 3, lines 65-66). With regard to claim 18, Cullen teaches a method for controlling a powertrain coupled to a driver operated vehicle, the powertrain having an internal combustion engine 10 coupled to a transmission 14, the method comprising: determining a desired vehicle speed deceleration trajectory 210 in response to a release of an accelerator pedal 50 by said driver, where desired engine output torque changes from positive to negative based on said release, and during said release: adjusting an engine torque to maintain positive powertrain output torque when an actual vehicle speed trajectory 220

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is below said desired vehicle speed trajectory 230; and adjusting said engine torque to transition from positive powertrain output torque to negative powertrain output torque when said actual vehicle speed trajectory is above said desired vehicle speed trajectory 270. With regard to claim 19, Cullen teaches the method wherein said desired vehicle speed trajectory is based on a vehicle operating parameter (Col. 3).

Allowable Subject Matter

Claims 6 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1 and 18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Aoyama, Maruyama, and Shiiba have been cited to show similar vehicle controls.

FACSIMILE TRANSMISSION

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is (703) 305-3597. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing

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and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3597) on _____ (Date)

Typed or printed name of person signing this certificate:

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your


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response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roger L Pang whose telephone number is 703-305-0445. The examiner can normally be reached on 5:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 703-308-0830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Roger L Pang
Patent Examiner
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January 12, 2004